

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TED HAMMON,

Plaintiff,

CIV. S-04-0754 DFL PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Findings and Recommendation

Defendants.

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Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision denying plaintiff disability and supplemental security income benefits.

If the claimant meets eligibility requirements, the Commissioner bases his decision upon a five-step analysis. First, the claimant must not currently be working. 20 C.F.R. §§ 404.1520(b), 416.920(b). Second, the claimant must have a "severe" impairment. 20 C.F.R. §§ 404.1520(c), 416.920(c).

1 Third, the medical evidence of the claimant's impairment is
2 compared to a list of impairments that are presumed severe enough
3 to preclude work; if the claimant's impairment meets or equals
4 one of the listed impairments, benefits are awarded. 20 C.F.R.
5 §§ 404.1520(d), 416.920(d). Fourth, if the claimant can do his
6 past work benefits are denied. 20 C.F.R. §§ 404.1520(e),
7 416.920(e). Fifth, if the claimant cannot do his past work and,
8 considering the claimant's age, education, work experience, and
9 residual functional capacity, cannot do other work that exists in
10 the national economy, benefits are awarded. 20 C.F.R. §§
11 404.1520(f), 416.920(f).

12 Defendant found that plaintiff was eligible for
13 disability benefits until December 31, 1994, that he suffers from
14 chronic pain disorder, mild degenerative disease of the cervical,
15 thoracic and lumbosacral spine and, since November 7, 1997,
16 depression as well, but that he suffers from no listed
17 impairment; that he retains the capacity to work as a
18 surveillance system monitor, parking lot cashier and small
19 products assembler and is not disabled.

20 This court must uphold the Secretary's determination that
21 a plaintiff is not disabled if the Commissioner applied the
22 proper legal standards and if the Secretary's findings are
23 supported by substantial evidence. Sanchez v. Secretary of
24 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
25 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
26 1200 (9th Cir. 1990). Substantial evidence means more than a

1 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401 (1971),
2 but less than a preponderance. Bates v. Sullivan, 894 F.2d 1059,
3 1061 (9th Cir. 1990). It means such relevant evidence as a
4 reasonable mind might accept as adequate to support a conclusion.
5 Richardson, 402 U.S. at 401. The court cannot affirm the
6 Commissioner simply by isolating supporting evidence but must
7 consider the entire record, weighing evidence that undermines as
8 well as evidence that supports the Secretary's decision.
9 Gonzalez v. Sullivan, 914 F.2d at 1200. If substantial evidence
10 supports administrative findings, or if there is conflicting
11 evidence that will support a finding of either disability or
12 nondisability, the finding of the Commissioner is conclusive,
13 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may
14 be set aside only if the proper legal standards were not applied
15 in weighing the evidence. Burkhart v. Bowen, 856 F.2d 1335, 1338
16 (9th Cir. 1988).

17 The objective evidence of physical impairment is minimal
18 yet plaintiff's claim to benefits rests upon physical limitations
19 he claims are imposed by intransigent pain, which claims some
20 physicians have accepted while others have not. For the reasons
21 identified by two administrative appeals judges, this court finds
22 that plaintiff's subjective complaints are unworthy of belief and
23 that medical opinion based thereon is not evidence that will
24 support the award sought. See Tr. 393-99 (appeals council's
25 detailed summary of plaintiff's false and evasive testimony); see
26 also Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997)

1 (holding that if a claimant's subjective complaints are not
2 credible, then a physician's opinion based upon those complaints
3 is equally unreliable).

4 The decision should be affirmed.

5 These findings and recommendations are submitted to the
6 Honorable David F. Levi, the United States District Judge
7 assigned to this case. 28 U.S.C. § 636(b)(1). Written
8 objections may be filed within ten days after being served with
9 these findings and recommendations. The document should be
10 captioned "Objections to Magistrate Judge's Findings and
11 Recommendations." The failure to file objections within the
12 specified time may waive the right to appeal the District Court's
13 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: May 23, 2005.

15 _____ /s/ Peter A. Nowinski

16 PETER A. NOWINSKI
17 Magistrate Judge

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